EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

APR 16 PAGE 20

ORIGINAL

Supreme Court, U.S.
FILED
APR 5 1999
CLERK

No. 98-7809

DISTRIBUTED
APR 13 1999

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

SALVADOR MARTINEZ,
PETITIONER,

V.

COURT OF APPEAL OF CALIFORNIA,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

SALVADOR MARTINEZ
PETITIONER IN PRO-SE
P-10344 CI-204
CAL, STATE PRISON-LAC
44750 60TH STREET WEST
LANCASTER, CA. 93536

30 pp

QUESTION PRESENTED

DOES THE CLEARLY ESTABLISH SIXTH AMENDMENT RIGHT TO SELF-REPRESENTATION AT "TRIAL", BY A DEFENDANT AS ANNOUNCED BY THIS COURT IN FARETTA V. CALIFORNIA 95 S.CT. 2525 (1975), APPLY TO SELF-REPRESENTATION ON "APPEAL" BY AN APPELANT?

TABLE OF CONTENTS

	Page:
STATEMENT OF THE CASE:	1-2
REASONS FOR GRANTING THE WRIT:	3
A. THE DECISION(S), INCLUDING CALIFORNIA'S, DECLINING TO EXTEND THE RIGHT TO SELF-REPRESENTATION ON APPEAL ARE INCORRECT.:	4-16
B. THE DECISIONS RECOGNIZING THE RIGHT TO SELF-REPRESENTATION ON APPEAL BASED ON FARETTA:	3,4,5 FOONOTE ONE
CONCLUSION:	17
DECLARATION OF SERVICE:	18

TABLE OF AUTHORITIES CITED IN ORDER

	PAGE:
1. FARETTA V. CALIFORNIA 95 S.CT. 2525 (1975)	(i) 3-16
2. HENDRICKS V. ZENON, 993 F.2d 664, 669 (9TH CIR. 1993)	5-12
3. MOORE V. CALDERON, 108 F.3d 261 (9TH CIR. 1996)	5
4. ADAMS V. U.S., 63 S.CT. 236	5, 7, 12, 14
5. WEBB V. STATE (1980) 274 IND. 540, 412, N.E.2d 790, 792	6
6. DOUGLAS V. CALIFORNIA (1963) 376 U.S. 353	6, 12, 16
7. WEBB V. STATE (TEX. CRIM. APP. 1976) 533 S.W.2d 783	6
8. HATHORN V. STATE (TEX. CRIM. APP. 1997) 848 S.W.2d 101, 123	6
9. MOORE V. MICHIGAN, 355 U.S. 155	6, 16
10. CARTER V. ILLINOIS, 67 S.CT. 216	6, 16
11. MYERS V. COLLINS (5TH CIR. 1993) 8 F.3d 249, 252	8
12. EVITTS V. LUCEY, 105 S.CT. 830	8, 9
13. STATE V. WARNER (LA. CT. APP. 1991) 594 So.2d 397, 402	10
14. STATE V. LEWIS (1986) 104 N.W. 218 719 P.2d 445, 447	10

TABLE OF AUTHORITIES CONTINUED

	PAGE:
15. PRICE V. JOHNSTON 68 S.CT. 1049	10, 11
16. CHAMBERLAIN V. ERICKSEN (8TH CIR. 1984) 744 F.2d 628, 630	
17. CAMBELL V. BLODGETT, 940, F.2d 549 (9TH CIR. 1991)	14

CONSTITUTIONAL PROVISIONS

SIXTH AMENDMENT	3-16
FOURTEENTH AMENDMENT	3-16

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998
NO. 98-7809

SALVADOR MARTINEZ,
PETITIONER

V.

COURT OF APPEAL OF CALIFORNIA
RESPONDENT.

STATEMENT OF THE CASE

PETITIONER REPRESENTED HIMSELF IN PRO-SE AT TRIAL AND WAS CONVICTED BY A JURY IN VIOLATION OF SECTION 503, CAL. PENAL CODE. THE JURY ALSO FOUND TRUE THAT PETITIONER HAD SUFFERED THREE ARIOR CONVICTIONS WITHIN THE OF THE "THREE STRIKES LAW," SECTIONS 667(d)(E)(2), 1170.12(B)(C). PETITIONER WAS SENTENCED TO TWENTY-FIVE TO LIFE IN STATE PRISON. PETITIONER TIMELY FILED HIS NOTICE OF APPEAL. ON OCTOBER 16, 1998, PETITIONER'S REQUEST TO PROCEED IN PRO-SE ON APPEAL WAS DENIED BY THE FOURTH APPELLATE DISTRICT, DIVISION THREE.
THE COURT CITED IN RE WALKER, 56 CAL. APP. 3d 225, FOR ITS DENIAL.

ON OCTOBER 27, 1998 PETITIONER FILED A PETITION FOR WRIT OF MANDATE WITH THE CALIFORNIA SUPREME COURT IN CASE NO. S074340. ON NOVEMBER 18, 1998, THE PETITION WAS DENIED.

PETITIONER FILED HIS PETITION FOR WRIT OF CERTIORARI ON DECEMBER 29, 1998.
ON JANUARY 14, 1999, THE FOURTH APPELLATE DISTRICT, DIVISION THREE, GRANTED PETITIONER'S REQUEST FOR A STAY OF HIS APPEAL PENDING THE RESOLUTION BY THIS COURT ON THE PETITION FOR WRIT OF CERTIORARI.

REASONS FOR GRANTING THE WRIT

To resolve the conflict and continuing split among the Federal and State Court(s) as to whether the Sixth Amendment confers the right to Self-representation on "appeal" based on this Court's decision in FARETTA V. CALIFORNIA (1975) 95 S.Ct. 2525 and related cases based on Constitutional analysis and application, e.g., Sixth and Fourteenth Amendments to the United States Constitution.

Therefore, the Writ should be granted to resolve the conflict (as) the "conflict" is substantial, e.g., there are (17) seventeen Federal and State Appellate court(s) recognizing the Sixth Amendment right, under FARETTA, to self-representation on appeal, Footnote (1), and (7) seven Appellate Court(s) declining to extend the FARETTA right to self-representation on appeal, Footnote (2).

FOOTNOTE(S)

(1). WEBB V. STATE (1980) 274 Ind. 540-412, N.E. 2d 790. 792; WEBB V. STATE, 533 S.W. 2d 780,783 (Tex. Crim. App. 1976); HATHORN V. STATE, 848 S.W. 2d 101,123 (Tex. Crim. App. 1992); STATE V. LEWIS, 104 N.M. 218,719 P.2d 445, 447-48 (N.M. App. 1986); PEOPLE V. STEPHENS, 71 Mich. app. 33, 246 N.W. 2s 429,432 (Mich. App. 1976); GIDRON V. STATE, 312 Ark. 517, 850 S.W. 2d 331, 332-33 (Ark. 1993); STATE V. VAN PELT, 305 Ark. 125, 810 S.W. 2d 27 (Ark. 19-91); PENNSYLVANIA, COM. V. ROGERS, 537 Pa. 581, 645 A.2d 223,224 (Pa. 1994)' LOUISIANA, STATE V. WARNER, 594 So. 2d 397,402 (La. App. 1991); CAMPBELL V. BLODGETT, 940 F.2d 594 (9th Cr. 1991); HENDRICKS V. ZENON, 993 F.2d 664,669 (th Cir. 1993)· CHAMBERLAIN V. ERICKSEN, 744 F.2d 628,630 (8th Cir. 1984);

A. The decision(s), including Calirornia's, declining to extend the right to self-representation on appeal are incorrect.

This Court in FARETTA V. CALIFORNIA 95 S.Ct. 2525 (1975) held..... "[T]he Sixth Amendment as made applicable to the States by the Fourteenth Amendment guarantees a defendant in a state criminal trial [the] Constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so, and tnat the state may not force a lawyer upon him when he wants to conduct his own defense".

////

////

FOOTNOTES CONTINUED FROM PAGE THREE

FOOTNOTE (1) CONTINUED. U.S. V. WAGNER, 158 F.3d 901,902 (5th Cir. 1998); MYERS V. JOHNSON, 76 F.3d 1330, 1333-34 (5th Cir. 1996); MYERS. V. COLLINS. 8 F.3d 249,252 (5th Cir. 1993); GOMEZ V. COLLINS, 993 F.2d 96 (5th Cir. 1993); U.S. V. SPENCE, 992 F. Supp. 1413 (S.D. Ga. 1998); U.S. V. ex rel. WILLIAMS V. O'LEARY, 712 F. Supp. 662 (N.D. I11. 1989);

FOOTNOTE (2). STATE V. GILLESPIS, 898 S.W. 2d 738 (Tenn. Crim App. 1994): WEATHERLY V. STATE, 704 S.W. 2d 730 (Tenn. Crim. App. 1985); STATE V. COLE, 629 S.W. 2d 915 (Tenn. Crim. App. 1981); STATE V. REEVES, 610 S.W. 2d 730 (Tenn. Crim. App. 1980); CALLAHAN V. STATE OF MARYLAND, 30 Md. App. 628, 354 A.2d 191 (Md. App. 1976); HILL V. STATE, 656 So. 2d 1271 (Fla. 1995); U.S. V. GILLIS, 773 F.2d 549 (4th Cir. 1985); LUMBERT V. FINLEY, 735 F.2d 239 (7th Cir. 1984

The FARETTA Court defined the Sixth Amendment with all of its' correlative rights and protection, including the subject matter before this Court, e.g., "to have assitance of counsel", "are part of the due process of law that is guaranteed by the Fourteenth amendment to defendants in criminal courts of state". Petitioner points out that the FARETTA Court did not distinguish "criminal trial court" [and] the "criminal appellate court". The FARETTA Court held that the "[S]ixth Amendment does nnot provide merely that defense shall be made for accused but grants to accused personally the right to make a defense", e.g., "right to sel-representation to make one's own defense personally". Id., at 2533

Here, it was Petitioner who represented himself and prepared his own defense at the trial level. Petitioner prepared his own defense during the merits of the trial. It was Petitioner who challenged the constitutionally of the California's "Three Strikes Law" by way of statutory and non-statutory Motion(s). It was Petitioner who made all of the objections to preserve his objections and challenges for Appellate review. To allow Appellate Counsel to prepare a defense on appeal, will not be Petitioner's own defense [which] he perfected and preserved for Appellate.

It is Petitioner's life that hings in the Appellate process and not that of Counsel. It is Petitioner liberty that is at stake and not Counsel's. It is Petitioner who will "suffer the consequences" if the Appellate Court rejects his defense and affirms the judgment and sentence of the Trial Court.

The FARETTA Court went on to say...."[T]he lanuage and spirit of the Sixth Amendment contemplate that counsel, like the other tools guaranteed by the Amendment, shall be an aid to a willing defendant not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel uopn the accused, aginst his considered wish, thus violates the logic of the Amendment". Id. at 2533.

Thus, the Respondent Court is in grave error in denying Petitioner his Constitutional right to prepare his own defnese and is in grave error in "thrusting unwanted counsel" upon Petitioner. Sixth and Fourteenth Amendments, respectively; FARETTA, supra; ADAMS V. U.S. 63 S.Ct. 236.

The FARETTA Court firmly held the Sixth amendment right to assistance of counsel included the right to represent one-self. Id., at 2530-2534. The FARETTA Court did not make the constitutional right of sefl-represention subject to any conditions except a "knowingly and intelligent waiver of the right to counsel". Accord, see also, HENDRICKS V. ZENON, 993 F.2d 664,669 (9th Cir. 1993) and MOORE V. CALDERON, 108 F.3d 261 (9th Cir. 1996). Here, Petitioner provided the Respondent Court with [his] "unequivocal" assertion of his right to represent himsel on appeal and further provided the Respondent Court with his "waiver of right to Counsel" on appeal.

The FARETTACourt did not distinguish the Sixth Amendment right to represent one-self at "trial" [or] "appeal". Nor did the FARETTA Court announce that the Sixth Amendment right to represent one-self on "appeal" does not apply as Respondent suggest. Further, the Faretta Court did not divide the Constitutional right to represent one-self between two class of people, e.g., a defendant at "trial" and an Appellant on "appeal". That would in of itself violate the equal protection clause of the Fourteenth Amendment.

Eventhough, the Faretta Court did use the "magic" word "appeal, there can be no constitutional difference between a "trial" or "appeal" if one chooses to exercise the "clearly estblished constitutional right to represent one-self on appeal [and] reject counsel for the purpose of appeal.

////

////

////

In WEBB V. STATE (1980) 274 Ind. 540, 412 N.E. 2d 790,792, the Indiana Supreme Court held:

"The question of whether the Sixth amendment also guarantees self-resentation on appeal has not been passed by the U.S. Supreme Court, but since the Sixth Amendment right to counsel is applicable at both trial and appeal, Douglas v. California (1963) 376 U.S. 353, it follows that there is a correlative right to reject counsel and proceed pro-se both at trial and on appeal of a criminal case. There is no meaningful distinction between conducting a defense at trial and prosecuting an appeal that prevents the application of the Faretta rationale to the case of an appellant who wishes to refect representation by counsel and instead represent himself on appeal". See also, WEBB V. STATE (Tex. Crim. App. 1976) 533 S.W. 2d 783; and HATHORN V. STATE (TEx. Cr. App. 1997) 848 S.W. 2d 101, 123. The Texas Court of Criminal Appeals holding the same reasoning.

A worthy note at this point, the FARETTA Court, citing CARTER V. ILLINOIS 67 S,Ct, 216, 91 L.Ed. 172, held....."[N]either the historic coneption of due process nor the vitality it derives from progressive standards of justice denies a person the right to defend himself or to confess guilt. Under appropriate circumstances the Constitution requires counsel be tendered; it does not require that under all circumstances counsel be foreced upon a defendant". Id., at 2531, footnote (12). See also, MOORE V. MICHIGAN, 355 U.S. 155, 161, 78 S.Ct. 191,195, 2 L.Ed. 2d 167.

Up to this point, Petitioner has shown that the Sixth and Fourteenth Amendments confers the Constitutional right to represent himself and the Constitutional right to reject counsel. FARETTA, supra; CARTER, supra; and MOORE, supra.

////

/////

An important issue which has not been viewed [or] addressed by the California Appellate Court(s) and the other Appellate Court(s) rejecting the self-representation right on appeal [is] the "Constitutional right to reject counsel". The FARETTA Court upheld this Constitutional right, Id., at p.p. 2530-2531, citing with approval, ADAMS V. U.S. EX REL. McCANN, 63 S.Ct. 236, 241 87 L.Ed. 268. In ADAMS, this Court recognized that the Sixth Amendment right to assistance of Counsel implicitly embodies a "correlative right to dispense with a lawyer's help" and that "the Constitution does not force a lawyer upon a defendant". Id., at 63 S.Ct. at 242. The ADAMS Court further stated. VIZ:

> "[T]he right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an accused's position before the law....What were contrived as protections for the accused should not be turned into fetters. To deny an accused a choice of procedure in circumstances in which he, though a layman, is as capable as any lawyer of making an intelligent choice, is to impair the the worth of great Constitutional safeguards by treating them as empty verbalisms...When the administration of the criminal law...is hedged about as it is by the Constitutional safeguards for the protection of an accused, to deny him in the exercise of his free choice the right to dispense with some of these safeguards...is to imprison a man in his privileges and call it the Constitution". Id., 63 S.Ct. at 241-242.

////

/////

////

Here, the Respondent Court has already "shackled" Petitioner's feet and violated the Constitutional right to "dispense" with Counsel. FARETTA, supra; and ADAMS, supra. Even after Petitioner submitted his "waiver" of Counsel, the Respondent Court appointed Counsel on Appeal on January 12, 19-99. See, "Order For Counsel ON Appeal", attached hierein, marked Exhibit "A". Here, the damage has been done.

Petitioner does not have a problem with Attorney Mishkin. In fact Attorney Mishkin has been very professional and effective. The issue here is Petitioner's right [to] "free choice", e.g., the Constitutional right to "dispense" with Counsel. Faretta, supra; Adams; supra; and Carter, supra; 95 S.Ct. at 2530-2531. Sixth and Fourteenth Amendments. The Fifth Circuit in MYERS V. COLLINS (5th Cir. 1993) 8 F.3d 249,252, held...."whether at trial or appeal, a defendant is not required to accept unwanted counsel".

The Attorney General is correct when he states that "the right to appeal a ....criminal case in California is statutory" [and] "there is no Constitutional right to appeal". It is, however, well established that "when a state opts to""...establish....a "system of appellate review as of right... it must nonetheless act....in accord with the due process clause of the Fourteenth Amendment". EVITTS V. LUCEY (1985) 83 L.Ed. 2d 821, 105 S.Ct. 830.

The EVITTS court concluded that the Sixth Amendment right to effective assistance of counsel at "trial", applies with equal force on "appeal", e. g., the Sixth Amendment right to "effective assistance of counsel on first appeal as of right guaranteed by due process clause of Fourteenth". Thus, the Sixth Amendment right to represent one-self at "trial" applies with equal force on "appeal under rational of EVITTS and FARETTA.

//////
///

ONCE A DEFENDANT OR AN APPELLANT INVOKES HI'S OR HERS DUE PROCESS TO "DISPENSE" WITH COUNSEL, HE OR SHE BECOMES "ASSISTANCE" OF COUNSEL, E.G., THEIR OWN COUNSEL FOR THE PURPOSE OF THE SIXTH AMENDMENT. THE FARETTA COURT REASONED THAT....."[T]HE COUNSEL PROVISION SUPPLEMENTS THIS DESING. IT SPEAKS OF THE "ASSISTANCE" OF COUNSEL AND AN ASSISTANT, HOWEVER, EXPERT, IS STILL AN ASSISTANT." Id. AT 2553.

THUS, IF THE DUE PROCESS CLAUSE GUARANTEES THE RIGHT TO THE "ASSISTANCE OF COUNSEL" ON APPEAL, AS OF RIGHT, AND IF THAT "ASSISTANT" IS THE APPELLANT, THEN THE SIXTH AMENDMENT GRANTS THE RIGHT TO MAKE HIS OWN DEFENSE ON APPEAL. THE SIXTH AND FOURTEENTH AMENDMENTS GUARANTEES THE RIGHT TO "ASSISTANT OF COUNSEL ON APPEAL"; THE RIGHT TO PRESENT HIS OWN DEFENSE ON APPEAL AND THE RIGHT TO "DISPENSE" WITH COUSEL FOR THE PURPOSE OF THAT APPEAL. FARETTA, SUPRA; EVITTS, SUPRA; ADAMS; SUPRA.

THE LOUISIANA APPELLATE COURT HELD.... "A DEFENDANT RIGHT TO SELF-REPRESENTATION EXTENDS TO HIS FIRST APPEAL." SEE, STATE V. WARNER (LA. CT. APP. 1991) 594 SO.2d 397, 402. THE NEW MEXICO COURT OF APPEALS IN STATE V. LEWIS (1986) 104 N.W. 218, 719 P.2d 445, 447, CONCLUDED...."AN ACCUSED HAS A CONSTITUTIONAL RIGHT TO PROSECUTE HIS OWN APPEAL."

THE ATTORNEY GENERAL FURTHER ARGUES THAT "A CRIMINAL DEFENDANT HAS NO CONSTITUTIONAL RIGHT TO BE PRESENT AT OR ARGUE AN APPEAL" AND CITES, PRICE V. JOHNSTON, 68 S.CT. 1049, 92 L.E.d 1356 (1948). THE PRICE COURT REASONED THE..."THE DISCRETIONARY NATURE OF THE POWER IN QUESTION GROWS OUT OF THE FACT THAT A PRISONER HAS NO ABSOLUTE RIGHT TO ARGUE HIS OWN APPEAL OR EVEN TO BE PRESENT AT THE PROCEEDINGS IN AN APPELLATE COURT.

THIS IS NOT THE ISSUE HERE. PETITIONER IS NOT SAYING HE HAS A RIGHT TO BE PRESENT AND ARGUE HIS APPEAL BEFORE THIS COURT OR THE RESPONDENT COURT. PETITIONER IS SAYING HE HAS A CONSTITUTIONAL RIGHT TO REJECT COUNSEL AND CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF ON APPEAL. PRICE IS DISTINGUISHABLE.

PRICE WAS REASONED OUT OF STATUTORY APPLICATION AND NOT "CONSTITUTIONAL" ANALYSIS AND GUARANTEES. A WORTHY NOTE IN CHIEF JUSTICE BURGER'S DISSENT IN FARETTA STATED... "ALTHOUGH THE COURTS OF APPEALS POSSESS THE POWER TO COMMAND THAT A PRISONER BE PRODUCED TO ARGUE HIS OWN APPEAL, THE EXERCISE OF THAT POWER IS A MATTER OF SOUND JUDICIAL DISCRETION."

THUS, WITH THESE COMMENTS, IT CAN BE SEEN THAT THE ISSUE IS TO BE "PRODUCED" BEFORE THE APPELLATE COURT "TO ARGUE HIS OWN APPEAL." A CLOSER READING OF THE COMMENT, THE APPELLATE COURT(S) STILL "POSSESS THE POWER TO COMMAND THAT A PRISONER BE PRODUCED "Id., AT 2541, AGAIN, UNDER "STATUTORY" AUTHORITY AT ISSUE IN PRICE. THE PRICE IS DISTINGUISHABLE. AS THE EIGHTH CIRCUIT COURT OF APPEAL IN CHAMBERLAIN V. ERICKSEN (8TH CIR. 1984) 744 F.2d 628, 630 CORRECTLY HELD...."A DEFENDANT'S RIGHT TO FILE A PRO-SE BRIEF OR MOTIONS IS DISTINGUISHABLE FROM A DEFENDANT'S RIGHT TO MAKE ORAL ARGUMENTS BEFORE THE COURT." CITING PRICE V. JOHNSTON, 344 U.S. 266, PRICE [IS] DISTINGUISHABLE.

THE ATTORNEY GENERAL FURTHER& ARGUES THAT THERE HAS TO BE A SHOWING THAT THE DENIAL OF SELF-REPRESENTATION ON APPEAL MUST "SHOCK THE CONSCIENCE" OR IS SO BRUTAL AS TO VIOLATE "DECENCIES OF CIVILIZED CONDUCT." THIS IS NOT APPLICABLE AND FAR FROM THE STANDARD OF REVIEW ON THE ISSUE AT BAR.

FIRST, THERE IS A SUBSTANTIAL CONFLICT AMONG THE FEDERAL AND STATE APPELLATE COURT(S) THAT MUST BE RESOLVED BY THIS COURT ON THE ISSUE OF THE CONSTITUTIONAL RIGHT TO REPRESENT ONE-SELF ON APPEAL AND THE CONSTITUTIONAL RIGHT TO "DISPENSE" WITH COUNSEL. NEITHER ISSUE "SHOCKS THE CONSCIENCE" BUT IS A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT. SECOND, THE STANDARD OF REVIEW IS SETOUT BY THIS COURT IN DOUGLAS AND FARETTA V. CALIFORNIA; ADAMS V. U.S.; CARTER V. ILLINOIS. SUPRA; AND EVITTS V. LUCEY, SUPRA; [AND] THE (17) SEVENTEEN APPELLATE COURTS CONFENING THE RIGHT TO SELF-REPRESENTATION ON APPEAL AND THE RIGHT TO REJECT COUNSEL. THE SIXTH AND FOURTEENTH AMENDMENTS CONFERS THESE CONSTITUTIONAL RIGHT OF SELF-REPRESENTATION AND THE RIGHT TO "DISPENSE" WITH COUNSEL ON APPEAL.

THE ATTORNEY GENERAL ALSO ARGUES THAT "THE CREATION OF A CONSTITUTIONAL RIGHT TO ELECT SELF-REPRESENTATION ON APPEAL RAISES A SERIES OF PROBBLEMATIC SUBSIDARY OF QUESTIONS." (AT PG.21). THE FARETTA COURT, AS THE RESPONDENT RECOGNIZES, SETTLED THESE "PROBLEMS." IT HAS BEEN (24) YEARS SINCE FARETTA AND THERE HAS BEEN NO "PROBLEM." EVEN IN THE APPELLATE LEVEL, WHERE ONE CAN REPRESENT HIMSELF. PETITIONER REPRESENTED HIMSELF BEFORE THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA AND BEFORE THE NINTH CIRCUIT COURT OF APPEALS. SEE ATTACHED ORDERS, MARKED EXHIBITS "B" AND "C", RESPECTIVELY. ONE CAN REQUEST HIS SELF-REPRESENTATION RIGHT AND THE RIGHT TO "DISPENSE" WITH COUNSEL BY "WAIVER". WITH THE TRIAL OR APPELLATE COURT AND HOLD A "TELEPHONIC HEARING" REGARDING THE FARETTA ADMONISHMENTS. THUS, THERE IS AND HAS NOT BEEN ANY "PROBLEM."

THERE IS NO TRIAL JUDGE OR APPELLATE COURT WHICH WOULD ALLOW ANY "PROBLEM" OR "ABUSE."

AS CAN BE SEEN BY THE ATTACHED ORDERS, PETITIONER REPRESENTED HIMSELF ON APPEAL AND "WAIVED COUNSEL" BEFORE THE NINTH CIRCUIT COURT OF APPEALS. THE NINTH CIRCUIT IS ONE OF THE APPELLATE COURTS THAT ALLOWS PRO-SE APPEALS. IT IS IRONIC THAT THE STATE OF CALIFORNIA SITS IN THE NINTH CIRCUIT AND DOES NOT FOLLOW THEIR PRESIDENTS. SEE, HENDRICKS V. ZENON, 993 F.2d 664, 669 (9TH CIR. 1993) AND CAMPBELL V. BLODGETT. 940 F.2d 549 (9TH CIR. 1991.)

THE ATTORNEY GENERAL FURTHER SUGGESTS THAT THE "DENIAL OF SELF-REPRESENTATION ON APPEAL COMPORTS WITH DUE PROCESS AND EQUAL PROTECTION." THE ATTORNEY GENERAL IS INCORRECT. FIRST, THE DENIAL VIOLATES DUE PROCESS IN THAT IT FORECLOSES THE DUE PROCESS RIGHT TO "DISPENSE" WITH COUNSEL. FARETTA, SUPRA; MOORE, SUPRA; (78 S.CT. 141, 195) AND ADAMS, SUPRA. IT FURTHER VIOLATES THE SIXTH AMENDMENT RIGHT TO PRESENT ONE'S OWN DEFENSE. FARETTA, SUPRA.

SECOND, THE PRACTICE VIOLATES "EQUAL PROTECTION" IN THAT A "DEFENDANT" AT TRIAL IS AFFORDED THE RIGHT TO "DISPENSE" WITH COUNSEL AND SELF-REPRESENTATION AND AN "APPELLANT" IS NOT AFFORDED THESE RIGHTS. IT IS VERY SIMPLE. THE "EQUAL PROTECTION" CLAUSE SAY(S) "EQUAL" NOT "UNEQUAL." FURTHER, THERE ARE (17) OTHER JURISDICTION(S) WHICH ALLOW SELF-REPRESENTATION AND THE RIGHT TO "DISPENSE" WITH COUNSEL AT "TRIAL" AND ON "APPEAL." RESPONDENTS SUGGEST THAT CALIFORNIA SHOULD BE ALLOWED TO "RUN" THEIR OWN APPELLATE SYSTEM. THE STATE OF CALIFORNIA IS NOT A "SOVEREIGN" STATE ON THE ISSUE AT BAR. IT IS PART OF THE "UNITED" STATES. THE FRAMERS OF THE CONSTITUTION CALLS IT THE "UNITED" STATES CONSTITUTION AND NOT THE "DIVIDED" STATES CONSTITUTION, ALSO THIS IS WHY THIS COURT IS CALLED THE "UNITED" STATES SUPREME COURT. THIS COURT SITS AS THE SUPREME COURT TO ENFORCE THE UNITED STATES CONSTITUTION.

WHEN A STATE HAS RUN AFOUL OF THE UNITED STATES CONSTITUTION, THIS COURT HAS NOT HESITATED TO ENFORCED THE RIGHTS AND PROTECTIONS OF THE UNITED STATES CONSTITUTION MANY TIMES OVER [AND] THIS COURT SHOULD NOT HESITATE NOW. THE STATE OF CALIFORNIA AND ITS 'APPELLATE PRACTICE(S) HAVE RUN AFOUL OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. THIS COURT MUST ~~■~~ BRING THE STATE OF CALIFORNIA TO "COMPORT" WITH THE RIGHTS AND PROTECTION(S) AND ~~FACE~~ FORCE THE STATE OF CALIFORNIA WITHIN THE REALM AND CONFINES OF THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION NAMELY, THE SIXTH AND FOURTEENTH AMENDMENT(S) RIGHT TO "DISPENSE" WITH COUNSEL AND THE RIGHT TO REPRESENT ONE-SELF ON APPEAL. FARETTA, SUPRA; ADAMS, SUPRA; CARTER, SUPRA; AND MOORE, SUPRA. DOUGLAS, SUPRA; AND EVITTS, SUPRA.

CONCLUSION

PETITIONER HAS PRESENTED A CONFLICT WHICH EXSIST AMONG THE FEDERAL AND STATE APPELLATE COURT(S) THAT MUST BE RESOLVED BY THIS COURT. E.G., THE CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION ON APPEAL AND THE CONSTITUTIONAL RIGHT TO REJECT COUNSEL FOR THE PURPOSE OF APPEAL.

PETITIONER HAS DEMOSTRATED THAT THE SIXTH AND FOURTEENTH AMENDMENT(S) TO THE UNITED STATES CONSTITUTION CONFERS THE CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION ON APPEAL AND THE CONSTITUTIONAL RIGHT TO "dispense" WITH COUNSEL ON APPEAL.

ACCORDINGLY, THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

x Salvador Martinez

SALVADOR MARTINEZ
PETITIONER IN PRO-SE

DATED:
April 2, 1999

DECLARATION OF SERVICE

I, SALVADOR MARTINEZ, HEREBY DECLARE THAT A COPY OF THE FOREGOING REPLY HAS BEEN SERVED BY PLACING SAME IN THE U.S. MAIL FROM THE CAL. STATE PRISON IN LANCASTER, CA. AND IN ACCORD WITH HOUSTON V. LUCEY. S.CT. — ON THIS 7 DAY OF APRIL, 1999, ADDRESS TO;

1. COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION THREE
925 N. SPURGEON ST.
SANTA ANA, CA. 92701-3700

2. ROBERT M. FOSTER
DEPUTY ATTORNEY GENERAL
110 WEST "A" ST. SUITE 1100
SAN DIEGO, CA. 92101

Salvador Martinez
SALVADOR MARTINEZ
DECLARANT

COURT OF APPEAL-4TH DIST. DIV. 3
FILED
OCT 16 1998
Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, **Plaintiff and Respondent,** **v.** **SALVADOR MARTINEZ,** **Defendant and Appellant.**	**G024042** **(Super. Ct. No. 98CF1062)** **ORDER**

Appellant's motion to represent himself on appeal is DENIED. (*In re Walker* (1976) 56 Cal.App.3d 225.)

SILLS, P.J.
SILLS, P.J.

THE STATE OF CALIFORNIA
COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION THREE

COURT OF APPEAL-4TH DIST. DIV. 3
FILED

Stephen M. [illegible], Clerk
Deputy Clerk

Case No. G024042

People v. Salvador Martinez

Superior Ct. No. 98CF1062 Orange County

ORDER FOR COUNSEL ON APPEAL

Cindi B. Mishkin, of Appellate Defenders, Inc., is appointed for the Appellant.

This case will be an Appellate Defenders, Inc. staff case.

Submitted by: Dawn Kuebler On: January 11, 1999
APPELLATE DEFENDERS, INC.

_____ The record on appeal has not been filed.

_✓_ The record on appeal has been filed and the time to file appellant's opening brief is extended to 2-22-99.

SILLS, P.J.
Presiding Justice

cc: Attorney General, Appellate Defenders, Inc., Appellant's

(D10A Notice to be sent to Superior Court)

Attorney's Name, Address and No.	Appellant's Name and Address
Cindi B. Mishkin Appellate Defenders, Inc. 233 "A" Street, Suite 1200 San Diego, CA 92101 (619) 696-0282 State Bar No. 169537	Salvador Martinez, # P10344 44750 60th Street West Lancaster, CA 93536

EXHIBIT "A"

FILED
JUN 5 2 38 PM '96
EASTERN DISTRICT
BY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SALVADOR P. MARTINEZ, JR., Defendant/Appellant, v. UNITED STATES OF AMERICA, Plaintiff/Appellee.	CR-F-95-5256 OWW ORDER ON MOTION TO PROCEED ON APPEAL IN PRO SE

Appellant, Salvador P. Martinez, Jr., has applied to the Court for permission to proceed on appeal in pro se.

To the extent this Court has jurisdiction regarding representation before the Court of Appeal, Defendant has demonstrated experience and background to enable him to prosecute his appeal.

/////

/////

/////

/////

/////

EXHIBIT "B"

IT IS ORDERED that Salvador P. Martinez, Jr., shall be permitted to prosecute his appeal in pro se.

DATED: May 28, 1996.

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

martinez.pl

FILED
JUL 11 1996
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. SALVADOR P. MARTINEZ, JR., Defendant-Appellant.	No. 96-10235 DC# CR-95-5256-OWW Eastern California (Fresno) ORDER

Before: NOONAN, LEAVY and TASHIMA, Circuit Judges

This court has received copies of appellant's motion to proceed on appeal pro se, filed on May 16, 1996 with the district court, and the district court's June 5, 1996 order granting appellant's motion. Court records do not show, however, that the district court engaged in the colloquy required by Faretta v. California, 422 U.S. 806 (1975) to confirm that appellant's request was knowing, intelligent, and unequivocal. See Hendricks v. Zenon, 993 F.2d 664, 669 (9th Cir. 1993).

Accordingly, this matter is referred to Appellate Commissioner Peter L. Shaw, who is authorized to hold a telephonic hearing at which he shall engage in a colloquy with appellant regarding the dangers and disadvantages of self-representation on appeal. Appellate Commissioner Shaw is authorized to consider such evidence as he deems necessary and to make findings of fact. See Fed. R. App. P. 48; 9th Cir. Gen. Ord. § 1.8.

Should the Appellate Commissioner determine that appellant wishes to withdraw his request to proceed on appeal pro se and to

EXHIBIT "C"

move for appointment of new counsel, the Appellate Commissioner is authorized to appoint counsel and no further action will be taken by this panel. See 9th Cir. Gen. Ord. § 6.3(e). Should the Appellate Commissioner determine that appellant wishes to continue with his request to proceed on appeal pro se, the Appellate Commissioner shall submit a recommendation concerning appellant's motion to this motions panel for further appropriate action.

The briefing schedule is stayed pending further order of this court.

mocal/6.25.96/wa

April 2, 1999

Supreme Court of The United States
Office Of The Clerk
Gail Johnson, Assistant
Washington, D.C. 20543-0001

Re: Salvador Martinez v. Court of Appeal
No. 98-7809

RECEIVED
APR - 9 1999
OFFICE OF THE CLERK
SUPREME COURT, U.S

Dear Ms. Johnson:

Please find enclosed the original copy of my Reply to Respondent's Opposition. I received Respondent's Opposition on March 24, 1999. I have mailed a copy of my Reply to the Attorney General and the Respondent Court. Please file my Reply with the Court. Thanks You for your consideration and help. May God Bless You and this Court.

Respectfully,
Salvador Martinez
Petitioner In Pro-Se
P-10344 C1-204
Cal. State Prison - LAC
44750 60th Street West
Lancaster, Ca. 93536

P.S.
Please note that the Prison is located in Lancaster, Ca.